IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **IA No. 2173/2007 & CS(OS) No. 1245/2006**

% **Date of Decision : August 24, 2007**

#BHARAT PETROLEUM CORPN. LTD. PLAINTIFF

! Through: Mr. Rajiv Nayyar, Sr. Advocate &
Mr. A.D. N. Rao, Advocate .

Versus

$MR. JAGRIT KHAITAN DEFENDANT

^ Through: Mr. S.K. Taneja, Sr. Advocate &
Mr. S.K. Chachra, Advocate.

CORAM:-
*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N. AGGARWAL, J.

The plaintiff has filed the present suit under Order XXXVII CPC for recovery of Rs.13,42,31,700/- against the defendant. The claim made in the present suit is on account of the sale tax liability of the defendant for the year 2002-03. The said liability has arisen on account of the fact that there was over writing in the Sales Tax forms i.e ST-35 and ST-35/1 furnished by the defendant which at the time of Sales Tax assessment were rejected by the Sales Tax Department. The Sales Tax Department had recovered an amount of Rs.13,42,31,700/- being the

Sales Tax liability of the defendant for the year 2002-03 by attachment of bank accounts of the plaintiff and this fact was not disputed by the counsel for the defendant. The defendant had failed to pay the amount claimed by the plaintiff in the present suit despite service of legal notice and hence the plaintiff has filed the present suit.

2 The defendant has filed his leave to defend application. The only ground on which he seeks leave of the Court to defend the suit is that the claim made by the plaintiff in the present suit on account of Sales Tax liability does not fall under the purview of Order XXXVII CPC and therefore decree cannot be passed in favour of the plaintiff without giving an opportunity to the defendant to defend this suit. The plaintiff in its suit has relied upon the acknowledgement of liability made by the defendant in correspondence exchanged between the parties prior to filing of the present suit. The defendant has not denied having written such letters to the plaintiff. The present suit filed by the plaintiff against the defendant is based upon the liability admitted by the defendant in his letter dated 27.12.2004 which is reproduced here-in-below:-

> " *Ref. No. J NDD/DLI/2003-04* *Dated 27.12.2004*
> *Mr. R.S. Jadeja,*
> *Territory Manager (I & C)*
> *M/s Bharat Petroleum Corporation Limited.*
> *Plot No. A-5 & 6, Sector-I,*

NOIDA (UP)

Subject:- <u>Issue of ST-35/ST-35/1 Forms</u>

Dear Sir,

This is in reference to the ST-35/ST-35/1 Forms to be issued to you by us. We assure you that we shall be fully responsible for the Tax and M/s Bharat Petroleum Corporation Limited in any way will not be held responsible for the same. If any loss is suffered by M/s Bharat Petroleum Corporation Limited on this account, the same will be paid by us in the times to come.

Thanking you,

Your faithfully,
For AGANNATH DUDADHAR

(Proprietor)"

3 The defendant in his leave to defend application has not denied having written the above referred letter to the plaintiff. He has also not denied that the claim made by the plaintiff in the present suit has already been recovered by the Sales Tax Department by attaching the bank accounts of the plaintiff and that recovery so made by the Sales Tax Department was on account of the Sales Tax liability owned to the plaintiff by the defendant. In that view of the matter, I fail to understand how the claim of the plaintiff does not fall within the ambit of Order XXXVII CPC. In my considered opinion, the claim of the plaintiff made in this suit squarely falls within the four corners of Order XXXVII CPC. The defendant has not prayed for grant of leave to defend the present suit

except on the ground already discussed here-in-above. In the opinion of this Court, the defendant has not raised any triable issue requiring trial of the case. Accordingly the leave to defend application filed by the defendant is hereby dismissed.

4 It is contemplated under Order XXXVII Rule 3(5) CPC that if an application for leave to defend the suit has been made by the defendant and the same is refused, the plaintiff shall be entitled to have the judgment signed forthwith. In the present case, since the application of the defendant under Order XXXVII Rule 3(5) CPC has been dismissed as the defendant has failed to raise any triable issue or disclose any defence in his application, in my considered opinion, the plaintiff has become entitled to have the decree for the suit amount forthwith. Accordingly a decree in the sum of Rs.13,42,31,700/- with costs is hereby passed in favour of the plaintiff against the defendant. However, since the plaintiff has failed to establish its claim of interest at 24% p.a which he has claimed at the market rate for commercial transaction, I am inclined to award interest at the prevalent rate only at 12% p.a on the decreetal amount from the date of institution of the present suit till realization. Decree sheet be prepared.

August 24, 2007 **S.N. AGGARWAL**

a **(JUDGE)**